

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO

In the Matter Of:

NOEL HUMBERTO MELENDEZ GONZALEZ
VILMA MARTINEZ RIVERA
SSN: xxx-xx-1807
SSN: xxx-xx-1531

Debtors

Case No. 10-04816 (BKT)

Chapter 13

MOTION TO DISMISS UNDER §1307

TO THE HONORABLE COURT:

COMES NOW, creditor POPULAR AUTO, INC., represented by the undersigned attorney and to this Honorable Court very respectfully alleges, states and prays as follows:

1. On May 31st 2010, debtors herein filed a bankruptcy petition under Chapter 13 of Title 11 of the United States Code.
2. Popular Auto is a creditor of the above named debtors pursuant to 11 U.S.C. §101(10) and therefore, a party in interest in the instant proceeding.
3. On August 25th 2005, co-petitioner Vilma Martinez Rivera subscribed with appearing creditor a Financial Lease Agreement, contract no. xx-xxx-xxxxxx-xx-x5578, regarding a 2005 Nissan Pathfinder. The contract was payable in seventy-two (72) consecutive monthly installments of \$564.00 each that expired by its own terms on October 1st 2011.
4. On June 18th 2010, Popular Auto filed the corresponding claim for this lease agreement. At the time of filing, debtors have accumulated \$2,185.99 in pre-

petition arrears and late charges. Said amount is not the pay-off balance of the lease contract. See claim no. 5.

5. Debtors' confirmed Chapter 13 plan dated November 22nd 2010 (docket no. 38), calls for sixty (60) payments of \$150.00 for a total base of \$9,000.00. The plan provides for the Trustee to pay attorney's fees in the amount of \$3,000.00 through the plan; pre-petition arrears to RG Mortgage and Centro de Recaudacion de Ingresos Municipales (CRIM); direct payments to RG Mortgage and Banco Popular¹; and pro-rata disbursements to all general unsecured creditors.
6. **Popular Auto submits that the debtors have defaulted in the terms and conditions of their chapter 13 plan, having as of this date four (4) payments in arrears with the trustee. The total amount in arrears is \$600.00 (\$150.00 x 4). See Exhibit no. 1, case Financial for case no. 10-04816. In addition to the above, debtors are also three (3) months in arrears with the post-petition payments to Popular Auto, for a total amount of \$1,776.60 (\$564.00 + \$28.20 [late charges] = \$592.20 x 3).**
7. Upon information and belief, debtors have continued to operate and are at present operating the vehicle, consequently causing depreciation in its value, and therefore jeopardizing Popular Auto's interest over such property.
8. Title 11 U.S.C. §1307 (c)(6) provides in pertinent part that:

“(c) Except as provided in subsection (e) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a

¹ It should be Popular Auto. The plan also provides for the assumption of the lease, the payment of the pre-petition arrears and insurance.

case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the state, for cause, including-... **material default by the debtor with respect to a term of a confirmed plan.**" (Emphasis added).

WHEREFORE, creditor POPULAR AUTO, INC., respectfully requests from this Honorable Court that an Order dismissing this case be entered for debtors' failure to comply with the requirements of 11 U.S.C. §1307(c)(6), and grant any such other remedy it may deem just and proper.

NOTICE IS HEREBY GIVEN THAT WITHIN THIRTY (30) DAYS AFTER SERVICE AS EVIDENCED BY THE CERTIFICATION, AND AN ADDITIONAL THREE (3) DAYS PURSUANT TO FED. R. BANK. P. 9006(f) IF YOU WERE SERVED BY MAIL, ANY PARTY AGAINST WHOM THIS PAPER HAS BEEN SERVED, OR ANY OTHER PARTY TO THE ACTION WHO OBJECTS TO THE RELIEF SOUGHT HEREIN, SHALL SERVE AND FILE AN OBJECTION OR OTHER APPROPRIATE RESPONSE TO THIS PAPER WITH THE CLERK'S OFFICE OF THE U.S. BANKRUPTCY COURT FOR THE DISTRICT OF PUERTO RICO. IF NO OBJECTION OR OTHER RESPONSE IS FILED WITHIN THE TIME ALLOWED HEREIN, THE PAPER WILL BE DEEMED UNOPPOSED AND MAY BE GRANTED UNLESS: (i) THE REQUESTED RELIEF IS FORBIDDEN BY LAW; (ii) THE REQUESTED RELIEF ITS AGAINST PUBLIC POLICY; (iii) IN THE OPINION OF THE COURT, THE INTEREST OF JUSTICE REQUIRES OTHERWISE.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY: That on October 3rd 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following: Mr. Juan O. Calderon Lithgow, Esq., Attorney for debtors; Mr. Jose R. Carrion Morales, Esq., Chapter 13 Trustee; and I hereby certify that I have mailed by the United States Postal Service the document to the following non CM/ECF participants: Mr. Noel H. Melendez

Motion to Dismiss Under 11U.S.C. §1307
Case No. 10-04816 (BKT)
By: Popular Auto
October 3, 2011
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Gonzalez and Mrs. Vilma Martinez Rivera, Debtor, 31005 Calle Margarita, Urb. Miraflores,
Dorado, P.R. 00646; and to all parties in interest as per attached master address list.

Respectfully submitted in San Juan, Puerto Rico, this 3rd day of September, 2011.

s/ EDGAR A. VEGA RIVERA
EDGAR A. VEGA RIVERA, ESQ.
USDC- PR 212210
Attorney for Popular Auto
Consumer Bankruptcy Department
PO Box 366818
San Juan, Puerto Rico 00936-6818
Tel. (787) 753-7849; Fax. (787) 751-7827
E-mail: edvega@bpr.com

FINANCIAL SUMMARY - CASE 10-04816

NOEL HUMBERTO MELENDEZ GONZALEZ paying **\$150.00** MONTHLY

Receipts	Rcpts/Deb Refunds	Disbursements	Adjustments	Trustee Disb	Trustee Adj	Show All
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Limits: Select Start Date Select Claim ID Select Payee Name Check Status: [Cleared](#) [Stale Dated](#) [Stop Payment](#) [Can](#)

Date	Payee	Payee Name	Source / Check	Description	Receipts	Disbursemen
8/24/2011			0655 00041 1054	LOCKBOX PAYMENT	\$150.00	
7/13/2011			0500 00380 5210	LOCKBOX PAYMENT	\$150.00	
5/24/2011			0502 00160 7973	LOCKBOX PAYMENT	\$150.00	
3/14/2011			0503 00180 5927	LOCKBOX PAYMENT	\$150.00	
3/14/2011			0503 00170 5927	LOCKBOX PAYMENT	\$150.00	
2/7/2011			0502 01730 6860	LOCKBOX PAYMENT	\$150.00	
12/17/2010			0500 01020 0090	LOCKBOX PAYMENT	\$150.00	
11/19/2010			0500 01360 1847	LOCKBOX PAYMENT	\$150.00	
10/21/2010			0500 01510 9640	LOCKBOX PAYMENT	\$150.00	
9/16/2010			0500 00770 0090	LOCKBOX PAYMENT	\$150.00	
8/12/2010			794 08-12 2010	MONEY ORDER/PAYMENT TO DEBTOR ACCOUNT	\$150.00	
7/12/2010			853 07-12 2010	MONEY ORDER/PAYMENT TO DEBTOR ACCOUNT	\$150.00	
				Totals:	\$1,800.00	\$0.00

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Debtors

CASE NO. 10-04816 (BKT)

CHAPTER 13

AFFIDAVIT FOR DEFAULT JUDGMENT PURSUANT TO SECTION 201(b)(4)
OF THE SERVICE MEMBERS CIVIL RELIEF ACT OF 2003

I, Edgar A. Vega Rivera, Attorney for the Consumer Bankruptcy Department of Banco Popular de Puerto Rico, declare under penalty of perjury the following:

That according to the enclosed certification, provided by the Department of Defense Manpower Data Center (DMDC), the Debtors are not on active duty or under call to active duty as members of the Army, Navy or Air Force of the United States of America; the National Guard; the Public Health Service or the National Oceanic and Atmospheric Administration.

In San Juan, Puerto Rico, this 3rd day of October, 2011.

s/ **EDGAR A. VEGA RIVERA**

Department of Defense Manpower Data Center

Oct-03-2011 08:50:51



Military Status Report
Pursuant to the Service Members Civil Relief Act

Last Name	First/Middle	Begin Date	Active Duty Status	Active Duty End Date	Service Agency
MELENDEZ-GONZALEZ	NOEL H.	Based on the information you have furnished, the DMDC does not possess any information indicating the individual status.			

Upon searching the information data banks of the Department of Defense Manpower Data Center, based on the information that you provided, the above is the current status of the individual as to all branches of the Uniformed Services (Army, Navy, Marine Corps, Air Force, NOAA, Public Health, and Coast Guard).

Mary M. Snavelly-Dixon, Director
Department of Defense - Manpower Data Center
1600 Wilson Blvd., Suite 400
Arlington, VA 22209-2593

The Defense Manpower Data Center (DMDC) is an organization of the Department of Defense that maintains the Defense Enrollment and Eligibility Reporting System (DEERS) database which is the official source of data on eligibility for military medical care and other eligibility systems.

The DoD strongly supports the enforcement of the Service Members Civil Relief Act (50 USC App. §§ 501 et seq, as amended) (SCRA) (formerly known as the Soldiers' and Sailors' Civil Relief Act of 1940). DMDC has issued hundreds of thousands of "does not possess any information indicating that the individual is currently on active duty" responses, and has experienced a small error rate. In the event the individual referenced above, or any family member, friend, or representative asserts in any manner that the individual is on active duty, or is otherwise entitled to the protections of the SCRA, you are strongly encouraged to obtain further verification of the person's status by contacting that person's Service via the "defenselink.mil" URL <http://www.defenselink.mil/faq/pis/PC09SLDR.html>. If you have evidence the person is on active duty and you fail to obtain this additional Service verification, punitive provisions of the SCRA may be invoked against you. See 50 USC App. §521(c).

If you obtain additional information about the person (e.g., an SSN, improved accuracy of DOB, a middle name), you can submit your request again at this Web site and we will provide a new certificate for that query.

This response reflects **active duty status** including date the individual was last on active duty, if it was within the preceding 367 days. For historical information, please contact the Service SCRA points-of-contact.

More information on "Active Duty Status"

Active duty status as reported in this certificate is defined in accordance with 10 USC § 101(d)(1) for a period of more than 30 consecutive days. In the case of a member of the National Guard, includes service under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under 32 USC § 502(f) for purposes of responding to a national emergency declared by the President and supported by Federal funds. All Active Guard Reserve (AGR) members must be assigned against an authorized mobilization position in the unit they support. This includes Navy TARs, Marine Corps ARs and Coast Guard RPAs. Active Duty status also applies to a Uniformed Service member who is an active duty commissioned officer of the U.S. Public Health Service or the National Oceanic and Atmospheric Administration (NOAA Commissioned Corps) for a period of more than 30 consecutive days.

Coverage Under the SCRA is Broader in Some Cases

Coverage under the SCRA is broader in some cases and includes some categories of persons on active duty for purposes of the

SCRA who would not be reported as on Active Duty under this certificate.

Many times orders are amended to extend the period of active duty, which would extend SCRA protections. Persons seeking to rely on this website certification should check to make sure the orders on which SCRA protections are based have not been amended to extend the inclusive dates of service. Furthermore, some protections of the SCRA may extend to persons who have received orders to report for active duty or to be inducted, but who have not actually begun active duty or actually reported for induction. The Last Date on Active Duty entry is important because a number of protections of SCRA extend beyond the last dates of active duty.

Those who would rely on this certificate are urged to seek qualified legal counsel to ensure that all rights guaranteed to Service members under the SCRA are protected.

WARNING: This certificate was provided based on a name and SSN provided by the requester. Providing an erroneous name or SSN will cause an erroneous certificate to be provided.

Report ID:A2NGVEJ4DG

Department of Defense Manpower Data Center

Oct-03-2011 08:52:15



Military Status Report
Pursuant to the Service Members Civil Relief Act

Last Name	First/Middle	Begin Date	Active Duty Status	Active Duty End Date	Service Agency
MARTINEZ-RIVERA	VILMA	Based on the information you have furnished, the DMDC does not possess any information indicating the individual status.			

Upon searching the information data banks of the Department of Defense Manpower Data Center, based on the information that you provided, the above is the current status of the individual as to all branches of the Uniformed Services (Army, Navy, Marine Corps, Air Force, NOAA, Public Health, and Coast Guard).

Mary M. Snavelly-Dixon, Director
Department of Defense - Manpower Data Center
1600 Wilson Blvd., Suite 400
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Report ID:R2VRAHDO6K

10-04816-BKT13 NOEL HUMBERTO MELENDEZ GONZALEZ and VILMA MARTINEZ RIVERA
Case type: bk **Chapter:** 13 **Asset:** Yes **Vol:** v **Bankruptcy Judge:** BRIAN K. TESTER
Date filed: 05/31/2010 **Date of last filing:** 08/12/2011 **Plan confirmed:** 11/23/2010

Creditors

American Infosource Lp As Agent for
T Mobile/T-Mobile USA Inc (2998040)
PO Box 248848 (cr)
Oklahoma City, OK 73124-8848

BANCO POPULAR (2992576)
PO BOX 713575 (cr)
SAN JUAN, PR 00936-7077

BANCO POPULAR DE PUERTO RICO
BANKRUPTCY DEPARTMENT (3054222)
PO BOX 366818 (cr)
SAN JUAN PR 00936-6818

BANK OF AMERICA (2992577)
PO BOX 17054 (cr)
WILMINGTON, DE 19850

BANK OF AMERICA (2992578)
PO BOX 17054 (cr)
WILMINGTON, DE 19850

COMMOLOCO (2992580)
PO BOX 41012 (cr)
MINILLAS STATION
SAN JUAN, PR 00940

COMMOLOCO (2992579)
PO BOX 363769 (cr)
SAN JUAN, PR 00936-3769

COOP A/C MANATI (2992581)
PO BOX 30562 (cr)
MANATI, PR 00674

COOP A/C VEGA BAJA (2992582)
PO BOX 4622 (cr)
VEGA BAJA, PR 00694

CRIM
LEGAL COUNSEL OFFICE (3025138)
PO BOX 195387 (cr)
SAN JUAN PR 00919-5387

FIA Card Services aka Bank of America

c/o Becket and Lee LLP POB 3001 Malvern PA 19355-0701	(3006649) (cr)
ISLAND FINANCE PO BOX 929 SANTURCE, PR 00908-0929	(2992583) (cr)
LIBERTY CABLEVISION OF PR PO BOX 719 LUQUILLO, PR 00773	(2992584) (cr)
POPULAR AUTO (POPULAR LEASING) BANKRUPTCY DEPARTMENT PO BOX 366818 SAN JUAN PUERTO RICO 00936-6818	(3003208) (cr)
Portfolio Investments I LLC c/o Recovery Management Systems Corporat 25 SE 2nd Avenue Suite 1120 Miami, FL 33131-1605	(3272116) (cr)
PR ACQUISITIONS LLC 250 MUNOZ RIVERA AVENUE SUITE 1200 HATO REY PR 00918	(2994192) (cr)
PRTC PO BOX 71401 SAN JUAN, PR 00936-8501	(2992585) (cr)
R G Mortgage Corp 280 Jesus T Pinero Ave Hato Rey, PR 00919	(2992586) (cr)
R&G MORTGAGE CORPORATION CARDONA-JIMENEZ LAW OFFICE, PSC P.O. BOX 9023593 SAN JUAN, PR 00902-3593	(3082515) (cr)
Recovery Management Systems Corporation 25 S.E. 2nd Avenue, Suite 1120 Miami, FL 33131-1605	(3272117) (ntcapr)
Security Credit Services, LLC PO Box 1156 Oxford MS 38655	(3038390) (cr)
STUART ALLAN & ASSOC 5447 E 5TH St STE 110 TUCSON, AZ 85711	(2992587) (cr)

PACER Service Center			
Transaction Receipt			
10/03/2011 11:48:21			
PACER Login:	bp0057	Client Code:	
Description:	Creditor List	Search Criteria:	10-04816-BKT13 Creditor Type: All
Billable Pages:	1	Cost:	0.08